



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 12, 1991

Mr. Lias B. "Bubba" Steen
Executive Director
State Purchasing and General Services Commission
P. O. Box 13047
Austin, Texas 78711-3047

OR91-639

Dear Mr. Steen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13892.

You have received a request for information relating to a contract submittal and description of a negative air system in an asbestos abatement project. Specifically, the requestor seeks "copies of the schematic drawings and a written description of the negative air system utilized with respect to the [Project ID# 91-012A-303]." The requestor also seeks "copies of the contractor's submittal." You claim that the requested information is excepted from required public disclosure under sections 3(a)(1) and 3(a)(10) of the Open Records Act.

Pursuant to section 7(c) of the act, we have notified the third party whose proprietary interests may be compromised by disclosure of the requested information. In response, we have received a letter from Ramzel-Wadell, Inc. (hereinafter "RWI"). RWI claims that some of the requested information is excepted from disclosure under the trade secrets branch of section 3(a)(10) of the Open Records Act.

Section 3(a)(10) excepts from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained

from a person and privileged or confidential by statute or judicial decision.¹ The Texas Supreme Court has adopted the definition of trade secret from the Restatement of Torts, section 757 (1939), *q. v. Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958). The Restatement lists six factors to be considered in determining whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the proprietor's] business;
- (2) the extent to which it is known by employees and others involved in [the proprietor's] business;
- (3) the extent of measures taken by [the proprietors] to guard the secrecy of the information;
- (4) the value of the information to [the proprietors] and [their] competitors;
- (5) the amount of effort or money expended by [the proprietors] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757, cmt. b (1939). These factors are indicia of whether information constitutes a trade secret; depending on the information being considered, one factor alone may be indicative of a trade secret. *See Open Records Decision No. 552 (1990) at 3.*

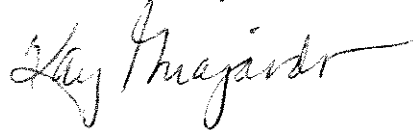
RWI objects to release of information relating to (1) its methods to design and construct asbestos abatement containment areas; (2) the design and specific methods of use of the air handling units; and (3) the source of makeup air and the related design of the decontamination portion of the containment area. RWI asserts that its design of asbestos abatement containment areas "is not used by anyone else in the industry and it would cause economic harm to RWI if the

¹Because RWI claims protection under the trade secrets branch of section 3(a)(10), we will not consider the applicability of the commercial or financial information branch.

information is made public." RWI also asserts that it has invested "countless hours" in the design of its air handling units. These units, we are advised, "differ from those used by [RWI's competitors]" and "are not used by any other contractor in the industry." Finally, RWI asserts that the design of the decontamination portion of the containment area is unique in the industry. We conclude that RWI has established that the information about the asbestos abatement project design constitutes a trade secret. To the extent that the RWI's initial submittal reflects project design specifications, the requested information may be excepted from required public disclosure by section 3(a)(10) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-639.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KG/GK/lcd

Ref.: ID#s 13892, 14129

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